United States Department of State
Office of Foreign Missions
Washington, D.C. 20520

October 6, 2000

Ms. Jerrily Kress
Director
Office of Zoning
One Judiciary Square
441 4th Street, N.W., 2nd Floor
Washington, D.C. 20001

BZA
Case No. 16620
Exhibit No. 32

RE: BZA Application No. 16620
Embassy of the Republic of Azerbaijan
2741 34th Street, N.W.

Dear Ms. Kress:

The Department of State hereby provides its comments concerning the application submitted to the BZA by the Embassy of the Republic of Azerbaijan on July 26,regarding its desire to locate its chancery at the property located at 2741 34th Street, N.W. The application was submitted pursuant to D.C. Code 5-1206 and Section 206 of the Foreign Missions Act (22 U.S.C. §4306.) This case is scheduled to be heard on October 17,2000.

On behalf of the Secretary of State, and pursuant to the Foreign Missions Act, 22 U.S.C. §4301, *et seq.*, particularly sections 4303 and 4306, I hereby convey to the BZA the following comments and determinations concerning the subject application. These comments and determinations relate to the statutory criteria governing BZA determinations that lie within the purview of the Federal Government, namely 22 U.S.C. §4306(d)(1), (4), and (6), as well as the pertinent portion of (d)(3).

First, with respect to the criterion set forth in 22 U.S.C. §4306(d)(1), we have determined that favorable BZA action on the present application would fulfill the international obligation of the United States to facilitate the acquisition of adequate and secure premises by the Government of Azerbaijan for its diplomatic mission in Washington. This factor is particularly compelling in this case in view of the reciprocal implementation of this treaty by Azerbaijan as detailed below.

Board of Zoning Adjustment
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Second, after consultation with Federal agencies authorized to perform protective services, we have determined, pursuant to 22 U.S.C. §4306(d)(6), that there exist no special security requirements relating to parking requirements in this case. I have also, after similar consultation, and pursuant to 22 U.S.C. §4306(d)(4), determined that the subject site and area are capable of being adequately protected.

Finally, pursuant to 22 U.S.C. §4306(d)(6), there is a substantial federal interest in this project. In 1999 the Department of State concluded a Bilateral Agreement on Diplomatic and Consular Properties with the Government of Azerbaijan granting reciprocal property rights to both countries. In the agreement, in addition to reciprocal ownership rights, the Azerbaijan Government agreed to the U.S. Government's request to purchase five properties adjacent to the U.S. Embassy in Baku from which the occupants had a clear view of the U.S. Embassy compound. The properties, which were purchased for security purposes, included two apartment buildings with tenants whom the Azerbaijan Government agreed to resettle. The resettlement issue was more difficult to resolve than originally anticipated and it took the active and sustained involvement of Ambassador Pashayev in Washington, the Foreign Ministry and Mayor's Office in Baku, and the Azerbaijan court system to settle the matter in favor of the United States. We understand the efforts of the Azerbaijan Government on behalf of the U.S. Embassy also engaged the attention of the President of Azerbaijan.

In short, the Government of Azerbaijan and its Embassy in Washington have strongly and effectively supported the Department's efforts to obtain appropriate and secure facilities for our Embassy in Baku. The Azerbaijan Embassy, which has waited seven years for the right to purchase a chancery property, now has selected a site appropriate for its needs and has asked for our assistance. We feel the federal interest is compelling in this case and strongly urge the BZA to approve the Embassy's request.

On a separate matter also pertaining to the federal interest, we are aware that there is a significant issue concerning the location of chanceries in the District of Columbia that involves an interpretation of the Foreign Missions Act. The Department's views are addressed in the attachment.

Sincerely,

T. Strickler

Theodore E. Strickler
Deputy Assistant Secretary

Attachment:
As stated

PROPER INTERPRETATION OF FOREIGN MISSIONS ACT SECTION 206(b)(2)(B)

The Department of State notes the clarification made by the National Capital Planning Commission that a Commission staff field investigation conducted in June 2000 showed that the area in which the Azerbaijan chancery is proposed to be located meets the original standards used by the Commission in mapping the Diplomatic-Overlay. That is, the area meets the one-third/two-thirds formula. The Department underscores further that it is the long-standing position of the United States Government (including the Department of Justice) that, in accordance with Section 206(b)(2)(B) of the Foreign Missions Act (FMA), chanceries are permitted to locate in any area in the District of Columbia "determined on the basis of existing uses, which includes office or institutional uses, *including but not limited to any area zoned mixed-use diplomatic* or special purpose, subject to disapproval by the District of Columbia Board of Zoning Adjustment in accordance with this section [section 206(d)] (emphasis added)." Thus chanceries may locate outside of the Diplomatic-Overlay, and outside of areas meeting the one-third/two-thirds formula, provided that the Foreign Missions Board of Zoning Adjustment (FM-BZA) determines, on a case by case basis, that the area is appropriate for chancery location "on the basis of existing *uses,* which includes office or institutional uses (emphasis added)."

Put another way, the FMA does not state that chanceries may locate "in any other area ... limited to any area zoned mixed-use diplomatic...." Rather the FMA states precisely the contrary: "a chancery shall also be permitted to locate ... in any other area, determined on the basis of existing uses, ... *including but not limited to* any area zoned mixed-use diplomatic...." (Emphasis added.)

Accordingly, the one-third/two-thirds formula used to map the D-Overlay may not be considered a prerequisite for chancery location. Indeed, use of the formula to preclude a chancery location would run afoul of FMA section 206(b)(3). That provision states a rule of non-discrimination: "the limitations and conditions applicable to chanceries shall not exceed those applicable to other office or institutional uses in that area."